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Date: 12/30/01 3:43pm
Subject: Settlement?

In my opinion the following article should be required reading by everyone in the Justice Department, Congress, and the White House:

The Wall Street Journal, December 27, 2001

Microsoft Has Good Year, At Expense of Customers

By WALTER S. MOSSBERG

IT HAS BEEN a terrific year for Microsoft, but average consumers of its products haven't fared so well.

Microsoft made major progress in its goal of using its Windows operating system to push its other products and services at the expense of its competitors. Consumers are the losers.

When 2001 started, the software giant was under the threat of a court-ordered breakup, having been found guilty by a federal district judge of violating antitrust laws in multiple ways.

In June, an appeals court threw out the breakup order and harshly criticized the lower-court judge, although it upheld the legal core of his findings. The seven appeals judges ruled unanimously that Microsoft was a monopoly that had violated the antitrust laws by integrating its Web browser into its Windows operating system in an effort to freeze out other browsers.

Expressed in plain English, the court said Microsoft shouldn't be allowed to design Windows in a way that limits consumer choice -- the ability of users to discover and easily use other companies' products and services. The court said it was OK to add features to Windows, as long as they weren't added mainly to maintain Microsoft's monopoly.

DESPITE THIS DECISION, the company went on to launch a new version of Windows -- Windows XP -- that continued to integrate tightly into the operating system new features that are crucial to extending Microsoft's monopoly onto the next battleground: Internet-based services. And it added these features in a way that hinders consumer choice.

For instance, Windows XP allows users to easily perform instant messaging, to authenticate their identities across the Web and to order prints of photos on their hard disks. But these features work only with Microsoft's own proprietary Internet services, or services owned by companies that pay

Microsoft for inclusion in Windows XP. Competing services, including those better-established or more popular than Microsoft's, aren't integrated into Windows XP in the same smooth way, so users are less likely to turn to them.

Microsoft attempted an even more breathtaking attack on consumer choice and online competition. It tried to integrate into Windows XP a feature whereby the built-in Web browser would automatically add links to millions of sites across the Web, without the permission of the owners. These Microsoft-imposed links, called browser Smart Tags, would have led users to Microsoft's sites and those of its partners. The company dropped the feature only after it was discussed in this column ("New Windows XP Feature Can Re-Edit Others' Sites") and sparked a massive outcry. But it reserved the right to try again.

Given this unrepentant behavior, you'd expect the Justice Department to react adversely. Instead, it has proposed to settle the antitrust case in a way that would leave this sort of conduct unfettered.

The settlement reached in October, now pending before yet another federal judge, does bar some offensive Microsoft behavior. But much of it pertains to the company's relations with the hapless makers of PCs, which aren't in any position to defy Microsoft. It isn't about consumer choice, except indirectly; it's more about placating Microsoft's competitors or partners. And it's all about the past, not the future battle in Internet services. It doesn't touch the company's ability to use Windows XP to extend its monopoly to these new areas.

WHAT'S WRONG with Microsoft building new features or gateways to services into Windows? Nothing, per se. I have never agreed with critics who assert that Windows shouldn't contain any feature that other companies want to sell separately. A more useful Windows is good for consumers. The problem is the way these features are designed.

It's great, for example, that Windows XP contains a built-in interface for doing instant messaging. But that interface should be neutral about which service a consumer wants. If I prefer to use the America Online instant-messaging service with the built-in Windows interface, I should be able to do so, just as I can use the built-in browser and e-mail program with non-Microsoft services. Instead, Microsoft has wired the interface to its own service.

So what, some might ask? Isn't it common in a free market for companies to use one of their products to cross-promote another? Doesn't AOL use its online service to boost the movies made by its Warner Brothers studios? Doesn't The Wall Street Journal run ads and plugs for its sister publications and Web sites?

The difference is that these other companies aren't court-certified monopolies, and when you're a monopoly, you have to follow different rules,

as the appeals court said.

So, in my view, the proposed Justice Department settlement with Microsoft is bad for consumers. It isn't about preserving or enhancing consumer choice. It seems to be about getting the nettlesome case out of the government's hair.

Our government and courts shouldn't try to destroy, or run, Microsoft. But they should require the software monopoly to expand consumer choice in its dominant operating system. Unfortunately, in 2001, that's not what happened
«Howard»